

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-5-'00-002
)
Wisconsin Color Press, Inc.) Proceeding to Assess a
Milwaukee, Wisconsin) Civil Penalty under
) Section 113(d) of the
Respondent.) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Wisconsin Color Press, Inc. (Wisconsin Color Press), a corporation doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. On April 9, 1996, U.S. EPA approved Wisconsin Administrative Code (Wis. Adm. Code) NR 422.142 (Control of Organic Compound Emissions from Lithographic Printing) as part of the federally enforceable state implementation plan (SIP) for Wisconsin. This rule became effective on June 10, 1996. 61 Fed. Reg. 15706.

5. On January 18, 1995, U.S. EPA approved Wis. Adm. Code Chapter NR 400 (Air Pollution Control Definitions) as part of the

federally enforceable SIP for Wisconsin. This rule became effective on February 17, 1995. 60 Fed. Reg. 3543.

6. On April 6, 1996, U.S. EPA approved Wis. Adm. Code NR 422.02 as part of the federally enforceable SIP for Wisconsin. This rule became effective on June 10, 1996. 61 Fed. Reg. 15706. Wis. Adm. Code NR 422.02 includes definitions applicable to certain terms used in Wis. Adm. Code NR 422.142.

7. Wis. Adm. Code NR 422.142 applies to all lithographic printing presses at any facility which is located in, among other counties, the County of Milwaukee and "which has maximum theoretical emissions of VOCs [volatile organic compounds] from all lithographic printing presses at the facility greater than or equal to 755.7 kilograms (1666 pounds) in any month."

8. Wis. Adm. Code NR 422.142(5)(a) provides, in part, that "[t]he owner or operator of a heatset web lithographic printing press shall demonstrate compliance with the appropriate destruction efficiency or emission rate in sub.(2)(a) by performing compliance emission tests on each control device. The initial tests shall be performed by the compliance deadline in sub.(6)(a)."

9. Wis. Adm. Code NR 422.142(6)(a) provides that "[t]he owner or operator of a lithographic printing press installed on or before July 1, 1996 shall achieve compliance with the applicable emission limitations of sub.(2) by July 1, 1996."

10. Wis. Adm. Code NR 422.142(6)(b)1. requires the owner or operator of a lithographic printing press which is installed on or before July 1, 1996 to submit to the Wisconsin Department of

Natural Resources (WDNR) no later than September 1, 1996 written certification that the press is in compliance with the applicable requirements of subs.(2) and (3) and to provide a demonstration of compliance in accordance with subs.(4) and (5).

11. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for SIP violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

12. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

14. Respondent is an Illinois corporation with a place of

business located at 5400 W. Good Hope Road, Milwaukee, Milwaukee County, Wisconsin.

15. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. Section 7602(e).

16. Respondent is the owner or operator of four "heatset web lithographic printing presses", designated as Presses P91, P92, P93, and P94, as defined at Wis. Adm. Code NR 422.02.

17. Presses P91, P92, P93, and P94 are sources of organic compound emissions to the ambient air.

18. Presses P91, P92, P93, and P94 are located at Respondent's place of business at 5400 W. Good Hope Road, Milwaukee, Wisconsin.

19. Presses P91, P92, P93, and P94 were installed on or before July 1, 1996.

20. Presses P91, P92, P93, and P94 each have a catalytic incinerator to control emissions.

21. Respondent's place of business at 5400 W. Good Hope Road, Milwaukee, Wisconsin is a "facility" as defined at Wis. Adm. Code NR 400.02(39).

22. Respondent's facility has "maximum theoretical emissions" of VOCs from all lithographic printing presses at the facility greater than or equal to 755.7 kilograms (1666 pounds) in any month as defined at Wis. Adm. Code NR 400.02(53m).

23. Wis. Adm. Code NR 422.142 applies to Presses P91, P92, P93, and P94.

24. As the owner or operator of heatset web lithographic printing presses, Respondent is subject to Wis. Adm. Code NR

422.142(5)(a).

25. As the owner or operator of lithographic printing presses, Respondent is subject to Wis. Adm. Code NR 422.142(6)(b)1.

26. On May 26, 1999, U.S. EPA sent a Notice of Violation to the Respondent for violations of Wisconsin Rules NR 422.142(5)(a) and NR 422.142(6)(b)1.

27. On June 16, 1999, U.S. EPA and Wisconsin Color Press held a conference to discuss the May 26, 1999, Notice of Violation.

Count I

28. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

29. Pursuant to Wis. Adm. Code NR 422.142(5)(a), Respondent was required to demonstrate compliance with the appropriate destruction efficiency or emission rate in sub. (2)(a) by performing compliance emission tests on the control device for Press P91 by July 1, 1996.

30. Respondent performed the initial compliance emission test required by Wis. Adm. Code NR 422.142(5)(a) on Press P91 on July 20-24, 1999 and thus failed to meet the July 1, 1996 deadline.

31. Respondent's failure to demonstrate compliance with the appropriate destruction efficiency or emission rate in Wis. Adm. Code NR 422.142(2) by performing an initial compliance emission test on the control device for Press P91 by July 1, 1996, is a violation of Wis. Adm. Code NR 422.142(5)(a) and the

federally enforceable SIP for Wisconsin.

Count II

32. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

33. Pursuant to Wis. Adm. Code NR 422.142(5)(a), Respondent was required to demonstrate compliance with the appropriate destruction efficiency or emissions rate in sub. (2)(a) by performing compliance emission tests on the control device for Press P92 by July 1, 1996.

34. Respondent performed the initial compliance emission tests required by Wis. Adm. Code NR 422.142(5)(a) on Press P91 on July 20-24, 1999 and thus failed to meet the July 1, 1996 deadline.

35. Respondent's failure to demonstrate compliance with the appropriate destruction efficiency or emission rate in Wis. Adm. Code NR 422.142(2) by performing an initial compliance emission test on the control device for Press P92 by July 1, 1996, is a violation of Wis. Adm. Code NR 422.142(5)(a) and the federally enforceable SIP for Wisconsin.

Count III

36. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

37. Pursuant to Wis. Adm. Code NR 422.142(5)(a), Respondent was required to demonstrate compliance with the appropriate destruction efficiency or emission rate in sub. (2)(a) by performing compliance emission tests on the control device for Press P93 by July 1, 1996.

38. Respondent performed the initial compliance emission test required by Wis. Adm. Code NR 422.142(5)(1) on Press P93 on July 20-24, 1999 and thus failed to meet the July 1, 1996 deadline.

39. Respondent's failure to demonstrate compliance with the appropriate destruction efficiency or emissions rate in Wis. Adm. Code NR 422.142(2) by failing performing an initial compliance emission test on the control device for Press P93 by July 1, 1996, is a violation of Wis. Adm. Code NR 422.142(5)(a) and the federally enforceable SIP for Wisconsin.

Count IV

40. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

41. Pursuant to Wis. Adm. Code NR 422.142(5)(a), Respondent was required to demonstrate compliance with the appropriate destruction efficiency or emission rate is sub. (2)(a) by performing compliance emission tests on the control device for Press P94 by July 1, 1996.

42. Respondent performed the initial compliance emission test required by Wis. Adm. Code NR 422.142(5)(a) on Press P94 on July 20-24, 1999 and thus failed to meet the July 1, 1996 deadline.

43. Respondents' failure to demonstrate compliance with the appropriate destruction efficiency or emission rate in Wis. Adm. Code NR 422.142(2) by performing an initial compliance emission test on the control device for Press P94 by July 1, 1996, is a violation of Wis. Adm. Code NR 422.142(5)(a) and the federally

enforceable SIP for Wisconsin.

Count V

44. Complainant incorporates paragraphs 1 through 27 of this Complaint, as if set forth in this paragraph.

45. Pursuant to Wis. Adm. Code NR 422.142(6)(b)1., Respondent was required to submit to WDNR not later than September 1, 1996 written certification that Press P91 is in compliance with the applicable requirements of subs.(2) and (3) and a demonstration that Press P91 is in compliance in accordance with subs. (4) and (5).

46. Respondent submitted to WDNR the written certification and demonstration of compliance required by Wis. Adm. Code NR 422.142(6)(b)1. for Press P91 on August 20, 1999 and thus failed to meet the September 1, 1996 deadline.

47. Respondent's failure to submit to WDNR written certification that Press P91 is in compliance with the applicable requirements of Wis. Adm. Code NR 422.142(4) and (5) by September 1, 1996 is a violation of Wis. Adm. Code NR 422.142(6)(b)1. and the federally enforceable SIP for Wisconsin.

Count VI

48. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

49. Pursuant to Wis. Adm. Code NR 422.142(6)(b)1., Respondent was required to submit to WDNR not later than September 1, 1996 written certification that Press P92 is in compliance with the applicable requirements of subs. (2) and (3) and a demonstration that Press P92 is in compliance in accordance

with subs. (4) and (5).

50. Respondent submitted to WDNR the written certification and demonstration of compliance required by Wis. Adm. Code NR 422.142(6)(b)1. for Press P92 on August 20, 1999 and thus failed to meet the September 1, 1996 deadline.

51. Respondent's failure to submit to WDNR written certification that Press P92 is in compliance with the applicable requirements of Wis. Adm. Code NR 422.142(4) and (5) by September 1, 1996 is a violation of Wis. Adm. Code NR 422.142(6)(b)1. and the federally enforceable SIP for Wisconsin.

Count VII

52. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

53. Pursuant to Wis. Adm. Code NR 422.142(6)(b)1., Respondent was required to submit to WDNR not later than September 1, 1996 written certification that Press P93 is in compliance with the applicable requirements of subs. (2) and (3) and a demonstration that Press P93 is in compliance in accordance with subs. (4) and (5).

54. Respondent submitted to WDNR the written certification and demonstration of compliance required by Wis. Adm. Code NR 422.142(6)(b)1. for Press P93 on August 20, 1999 and thus failed to meet the September 1, 1996 deadline.

55. Respondent's failure to submit to WDNR written certification that Press P93 is in compliance with the applicable requirements of Wis. Adm. Code NR 422.142(4) and (5) by September 1, 1996 is a violation of Wis. Adm. Code NR 422.142(6)(b)1. and

the federally enforceable SIP for Wisconsin.

Count VIII

56. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

57. Pursuant to Wis. Adm. Code NR 422.142(6)(b)1., Respondent was required to submit to WDNR not later than September 1, 1996 written certification that Press P94 is in compliance with the applicable requirements of subs. (2) and (3) and a demonstration that Press P94 is in compliance in accordance with subs. (4) and (5).

58. Respondent submitted to WDNR the written certification and demonstration of compliance required by Wis. Adm. Code NR 422.142(6)(b)1. for Press P94 on August 20, 1999 and thus failed to meet the September 1, 1996 deadline.

59. Respondent's failure to submit to WDNR written certification that Press P94 is in compliance with the applicable requirements of Wis. Adm. Code NR 422.142(4) and (5) by September 1, 1996 is a violation of Wis. Adm. Code NR 422.142(6)(b)1. and the federally enforceable SIP for Wisconsin.

Proposed Civil Penalty

60. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

61. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$100,240. Complainant evaluated

the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

62. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

63. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

64. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

65. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the

Consolidated Rules. Complainant has authorized Christine Liszewski to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Liszewski at (312) 886-4670. Ms. Liszewski's address is:

Christine Liszewski (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

66. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Christine Liszewski and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

67. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a

hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 68 through 73 below.

Answer

68. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 64, above, and must serve copies of the written answer on the other parties.

69. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

70. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

71. Respondent's failure to admit, deny, or explain any

material factual allegation in the complaint constitutes an admission of the allegation.

72. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 67 above.

73. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

74. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Christine Liszewski at the address or phone number specified in paragraph 65, above.

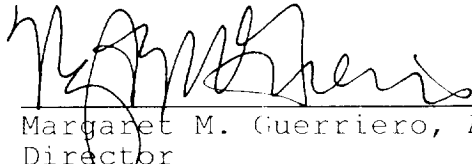
75. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing

a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

76. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, State, or local law.

December 17, 1999
Date



Margaret M. Guerriero, Acting
Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-5-00-002

In the Matter of Wisconsin Color Press
Docket No.

CAA-5- '00 - 002

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original
and one copy of the Administrative Complaint, docket number CAA-5- '00 - 002
to the Regional Hearing Clerk, Region 5, United States
Environmental Protection Agency, and that I mailed correct copies
of the Administrative Complaint, copies of the "Consolidated
Rules of Practice Governing the Administrative Assessment of
Civil Penalties, Issuance of Compliance or Corrective Action
Orders and the Revocation, Termination or Suspension of Permits"
at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part
22), and copies of the penalty policy described in the
Administrative Complaint by first-class, postage prepaid,
certified mail, return receipt requested, to the Respondent and
Respondent's Counsel by placing them in the custody of the United
States Postal Service addressed as follows:

Frederick C. Cappetta, CEO
Wisconsin Color Press, Inc.
Subsidiary of Midcontinent Printing, Inc.
5400 W. Good Hope Road
Milwaukee, Wisconsin 53223

and: Michael M. Berzowski, Esq.
Weiss, Berzowski, Brady & Donahue
700 North Water Street
Milwaukee, Wisconsin 53202

on the 21 day of December, 1999.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 2199026463